

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|------------------------|---|-------------------|
| MICHAEL E. ACEVEDO, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 4:10CV348 CEJ |
| |) | |
| DEPARTMENT OF VETERANS |) | |
| AFFAIRS, et al., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Michael Acevedo for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from

such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989); Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff’d 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

Discussion

Plaintiff brings this Bivens action for an alleged violation of his constitutional rights. Named as defendants are the Department of Veterans Affairs (VA), and VA physicians James Toombs, Francis X. Jana and Denise Apprill. Plaintiff seeks monetary and declaratory relief.

Plaintiff alleges that the physician defendants have refused to prescribe him Hydrocodone for his pain because they believe he is a frequent user of marijuana. Plaintiff says that he uses marijuana to ease his back pain, but he takes issue with being labeled a “frequent user.” Plaintiff believes that the denial of Hydrocodone violates his constitutional rights.

The complaint is legally frivolous because plaintiff has no constitutional right to a prescription for Hydrocodone. Additionally, plaintiff has not pled any facts that show that defendants were deliberately indifferent to plaintiff's serious medical needs. Estelle v. Gamble, 429 U.S. 97, 106 (1976). As a result, the Court will dismiss this action pursuant to 28 U.S.C. § 1915(e).


Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **granted**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 18th day of March, 2010.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE